Supreme Court, U.S.
FILED
02 594 OCT 22 2002
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MORETON ROLLESTON, JR.,

Petitioner,

v.

SANDEASE, LTD., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

MORETON ROLLESTON, JR.
2035 Garraux Road, N.W.
Atlanta, Georgia 30327
(404) 237-3666
Georgia Bar No. 613700

Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3288

15 pp

QUESTIONS PRESENTED FOR REVIEW

This is a RICO case. The violations of the U.S. and Georgia RICO (O.C.G.A. §16-14-4) statutes were conceived, initiated, conducted and supervised by an attorney, Respondent Koski. His associates and co-conspirators were the clients of this attorney; they included four individuals and 2 corporations.

The illegal scheme is described in detail in Exhibit "C" to this petition. The scheme was carried out completely by Koski and all other respondents. The predicate acts are still being pursued.

This ruling of the trial court violated Amendment VII of the U.S. Constitution, U.S. RICO and Georgia RICO.

LIST OF PARTIES

1. Moreton Rolleston, Jr.
   Petitioner

2. Sandease, Ltd., Coast House, Ltd., Joseph A. McBride, Timothy B. McBridge, Frank McBride, Robert C. Koski,
   Respondents.

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O.C.G.A. 13-8-2(a)(5) 0

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Constitutional Provisions:

Amendment VII of U.S. Constitution 1

PETITION FOR A WRIT OF CERTIORARI

The jurisdiction of this Court to review the judgment of the Supreme Court of Georgia is involved under 28 U.S.C. Paragraph 1257.

STATEMENT OF CASE

The allegations of the complaint regarding Koski's letter (Appendix C) were admitted. There was no hearing. There was no evidence introduced. The trial court was in error by granting summary judgment dismissing the complaint and by granting motion for judgment on the pleadings.

ARGUMENT

1.

A RICO violation involving $3,800,000 has survived without punishment. Grounds for jurisdiction is past and is continuing violation of Georgia and U.S. RICO.

2.

Amendment VII of U.S. Constitution guaranteed a trial by jury. The granting of a summary judgment does not meet the standard of trial by jury. The granting of a summary judgment is a trial by a judge and is unconstitutional.

The trial court granted a summary judgment in this case and said judgment violated Article VII to the U.S. Constitution.

3.

The RICO scheme, as described in Exhibit C, is a flagrant, blatant violation of:

(a) O.C.G.A. 16-14-4 (RICO)
(b) O.C.G.A. 16-10-95 (a) (1) (barratry)
(c) O.C.G.A. 13-8-2(a)(5) (champerty)
(d) Rules of professional ethics and conduct of attorneys in Georgia and every other state

4.

Champerty is defined in:

(a) Sapp v. Davis, 176 Ga. 265, 168 S.E. 62
(b) Clark v. Harrison, 182 Ga. 56, 184 S.E. 620

CONCLUSION

Brevity is precious. The trial court and the Supreme Court of Georgia erred.

Respectfully submitted,

MORETON ROLLESTON, JR.
2035 Garraux Road, N.W.
Atlanta, Georgia 30326
(404) 237-3666
Georgia Bar No. 613700

Petitioner Pro Se.

APPENDIX A

SUPREME COURT OF THE STATE OF GEORGIA
CLERK'S OFFICE
ATLANTA

DATE: May 28, 2002

Case No. S02C0716

MORETON ROLLESTON, JR. v. SANDEASE, LTD., et al.

COURT OF APPEALS CASE NO. A01A2322

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

_____

_____

_____

_____

Sherie M. Welch, Clerk

APPENDIX B

THIRD DIVISION
JOHNSON, P. J.,
RUFFIN and ELLINGTON, JJ.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, December 14, 2000) http://www.appeals.courts.state.ga.us/rules.html

January 9, 2002

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A01A2322. ROLLESTON v. SANDEASE, LTD, et al.

ELLINGTON, Judge.

In this case, the following circumstances exist and are dispositive of the appeal:

(1) The evidence supports the judgment;

(2) No reversible error of law appears and an opinion would have no precedential value;

(3) The judgment of the court below adequately explains the decision; and

(4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. Johnson, P.J., and Ruffin, J., concur.

APPENDIX C

REMLER, KOSKI & NEAR
A Professional Corporation
Attorneys At Law

1400 RESURGENS PLAZA
945 EAST PACES FERRY ROAD
ATLANTA, GEORGIA 30326
TELEPHONE (404) 239-0200
FAX (404) 237-2150

ALBERT N. REMLER
ROBERT C. KOSKI
BRIEN C. NEAR
MARC G. MELIKIA
OF COUNSEL
DAVID R. KAM

August 22, 1991

Taylor W. Jones, Esquire
Myles E. Eastwood, Esquire
JONES, BROWN, BRENNAN & EASTWOOD
1900 One Georgia Center
600 West Peachtree Street, NW
Atlanta, GA 30308

Re: *Coast House, Ltd., and Sandease, Ltd. v. John Randolph Cherry, Executor,* Fulton County Superior Court, Civil Action File No: D-81176

Gentlemen:

This is to confirm the terms we have agreed upon in complete satisfaction of our clients' judgment against your client, the Estate of Rebecca Sims. Signature hereunder at the space provided shall constitute a final acceptance of the agreement, with the necessary papers to be completed and presented for final execution on or by Friday, September 6, 1991. The terms we have agreed upon are as follows:

(1) Taylor James and the Estate shall have an option for the purchase or designation of a purchaser of the house and lot at 1777 West Paces Ferry Road for a purchase price, payable all cash net to the Plaintiffs, in the amount of $500,000.00. This option shall be open until Friday, September 6, and shall require the payment by the purchaser of $50,000.00 earnest money, which sum will be non-refundable, except in the event of a failure of title, and will be held in our escrow account until closing and will apply toward the purchase price at closing. The sale must be closed on or before October 21, 1991. If such a contract is in existence, signed by the Sims Estate and the purchaser, and the $50,000.00 earnest money is paid by 5:00 p.m., on September 6, 1991, the Sims Estate will not be required to convey title to the house to our clients and your client will instead pay the $500,-000.00 in cash out of the proceeds of the closing on or before October 21, 1991.

(2) If you or your client are not able to produce a signed contract accompanied by $50,000.00 earnest money as outlined in paragraph 1 above by 5:00 p.m., September 6, 1991, we will at that time have a closing in which your client will convey to our clients the house and lot at 1777 West Paces Ferry Road by our Executor's Deed with affidavit of title, in a form consistent with that used in the transfer of the Estate's interest in Camellia Cottage to the plaintiffs. The house will be conveyed free and clear of all liens and uncumbrances, except 1991 property taxes. The taxes will be prorated as of September 6, 1991. My clients will pay any taxes due but not paid on the property, and will accept an unsecured note from the estate for that sum plus any additional pro ration, which will be payable by the estate from the sale of any other property in the estate, and in any event; no later than August 16, 1992.

(3) The house is presently inhabited by a tenant, who is a friend of Randy Cherry and who is entitled to thirty days' notice to vacate the property. We will require that he be given immediate notice to vacate, pursuant to that entitlement. Upon his vacation, Randy Cherry will have an additional five days to move the furniture and personal property out of the house, but all items of furniture and personal property shall remain the property of the Sims Estate.

(4) The Plaintiffs will agree to the distribution by the Estate to the heirs of Mrs. Sims, free of all claims under the judgment and free of any claims based upon or arising out of the note contemplated in paragraph 7 hereafter, of both Cherokee County properties, the Wight Family Partnership, any other partnership in which the Estate may have any interest, the proceeds of any Estate tax return refund, all personal property owned by Mrs. Sims before her death, and any liquid assets presently in the Estate. At the time of conveyance of the property at 1777 West Paces Ferry Road to my clients or, in the alternative, the payment of $500,000.00 cash to my clients, my clients will execute quitclaim deeds releasing any and all liens and claims against the two Cherokee County properties and quitclaim bills of sale releasing any and all claims or liens against the above-described intangible assets, liquid assets and personal properties.

(5) The Estate will be given a credit against the amount of the judgment for the appraised value of the property at 1777 West Paces Ferry road as stated on the Estate tax return, and my clients will support the Estate in establishing that amount as the value of the property agreed upon at the time of settlement in the event that the Property is transfered to the Plaintiffs pursuant to this agreement. Otherwise, the estate will receive a credit

against the judgment in the amount of the cash actually paid.

(6) The Estate will execute an unsecured note bearing interest the legal rate of 12% per annum to my clients in the amount of the judgment, including accrued interest, less any payments and/or less the agreed upon appraised value of the property at 1777 West Paces Ferry Road.

(7) Your client will hire the attorneys designated by the Plaintiffs to pursue a claim for legal malpractice and/or contribution against Mr. Moreton Rolleston, Jr. on behalf of the Estate. My clients will agree to pay any and all necessary expenses involved in said litigation to be pursued on the basis of a contingent fee not to exceed thirty percent. The net recovery of said claim will be payable upon receipt toward the note referred to in paragraph 7 above, with any remainder after full payment of the note to be paid to the Estate. This litigation is to be commenced as soon as practicable.

(8) The Sims Estate and your law firm as its attorneys agree to fully and completely cooperate with the plaintiffs in all efforts taken for the purpose of pursuing the contribution and malpractice claims against Mr. Rolleston, the pending *O.C.G.A.* §9-15-14 claim and any other claims asserted against Mr. Rolleston, which cooperation will include providing complete access to your files and reasonable consultations with the attorneys representing the plaintiffs.

(9) The plaintiffs will indemnity and hold harmless the Sims Estate, its executors and heirs and its attorneys as to any claims for abusive litigation under §9-15-14, *Yost v. Torok*, or its statutory successor, or any claims for conspiracy or similar torts alleged to result from or relate to this settlement agreement as applied to any

claim pursued on behalf of the estate against Mr. Rolleston. The attorney(s) to be selected by the plaintiffs pursuant to paragraph 7 above shall also represent the Estate at the hearing dealing with potential liability of Mr. Rolleston, pursuant to §9-15-14.

(10) The parties will agree that there is no basis for appeal of the judgment in this litigation and the pending motion for new trial will be dismissed.

I believe the above incorporates the terms we have agreed upon. Please signify your agreement by signing the enclosed copy of this letter and returning it to me. Thank you.

Sincerely,

/s/ Robert C. Koski
Robert C. Koski

ACCEPTED BY

/s/ Taylor W. Jones
Attorney for the estate of
Rebecca W. Cherry Sims

"Exhibit B"

[SEAL]
SUPERIOR COURT
FULTON COUNTY, GEORGIA

PROMISSORY NOTE

JOHN RANDOLPH CHERRY, as Executor under the last will of REBECCA WIGHT CHERRY SIMS, for value received does hereby promise to pay on demand to the order of SANDEASE, LTD. and COAST HOUSE, LTD. as joint venturers, the sum of Three Million Two Hundred Ninety Five Thousand Six Hundred Fifty Five & 88/100 Dollars ($3,294,655.88) with interest from the date hereof until paid at the rate of Twelve per cent (12%) per annum, and all costs of collection, including fifteen per cent of the principal and interest as attorney's fees if collected by legal action or through an attorney at law.

To secure the payment of this note, the maker hereby conveys and assigns to holder, pursuant to the terms and conditions of that certain letter agreement dated August 22, 1991 between the parties acting through their attorneys, the following property:

> The net proceeds after deduction of Attorneys Fees and Expenses recovered on any and all claims, settlements, or judgments based upon contribution, negligence, or any other legal theory against Moreton Rolleston, Jr., his heirs and assigns, or any other person, corporation, or other entity, arising as the consequence of advice rendered by Moreton Rolleston, Jr. for Mrs. Rebecca Wight Cherry Sims, in relation to her sale of her interest in that property situated in Glynn County, Georgia known as Camellia Cottage, and that certain judgment rendered in favor of Coast House, Ltd. and Sandease, Ltd., against the Maker hereof, namely Fulton County Superior Court Civil Action File Number D-81176.

Demand for payment, presentment, protest, and notice of protest and dishonor, and all other notices or demands whatsoever with respect to this note or the enforcement hereof are hereby waived.

The rights and remedies given herein to the holder are cumulative and in addition to those provided by law.

Given under the hand and seal of the undersigned, this 17th day of September, 1991.

/s/ John Randolph Cherry L.S.
JOHN RANDOLPH CHERRY as executor
under the last will of REBECCA WIGHT
CHERRY SIMS

Supreme Court, U.S.
FILED
02 594 OCT 22 2002
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

MORETON ROLLESTON, JR.,

Petitioner,

v.

SANDEASE, LTD., *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
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SUPPLEMENTAL APPENDIX

MORETON ROLLESTON, JR.
2035 Garraux Road, N.W.
Atlanta, Georgia 30327
(404) 237-3666
Georgia Bar No. 613700

Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3288

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Appendix D — Final Order Granting Defendants' Motion To Dismiss And Motion For Summary Judgment in Superior Court of Fulton County, Georgia, dated 5/3/01 ..... 11a

APPENDIX D

[Filed May 3 2001]

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Civil Action File
No. 2000CV28720

MORETON ROLLESTON, JR.,

Plaintiff,

v.

SANDEASE, LTD; COAST HOUSE, LTD;
JOSEPH A. McBRIDE; TIMOTHY B. McBRIDE;
FRANK McBRIDE, JR., and ROBERT C. KOSKI,

Defendants.

FINAL ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

This case arises out of a long history of litigation between these parties. Briefly, Plaintiff in this action previously represented Rebecca Wight Cherry Sims (now deceased) concerning title to and the disposition of certain property on St. Simon Island. Eventually, after title to the property was litigated, it was to be sold to Coast House, Ltd. ("Coast House") in May of 1995, but Plain-

tiff directed his client not to appear at the closing.[1] The failure of this closing subsequently led to numerous lawsuits between Rolleston, the Cherry Estate, and the Defendants herein.

The current litigation revolves around a settlement agreement between Defendants and the Cherry Estate, in which Defendants Coast House and Sandease, Ltd. ("Sandease") agreed to pay the costs incurred by the Cherry Estate in pursuing its malpractice action against Plaintiff. Defendant Koski apparnetly authored the agreement as counsel. Plaintiff contends in this action that the settlement agreement is void and unenforceable, as it constitutes champerty and barratry. Plaintiff also seeks to recover against the Defendants for abusive litigation. This case is currently before this Court on Defendant Koski's motion for summary judgment and the remaining Defendants' motion to dismiss.

(1) Motion for Summary Judgment

In his motion, Defendant Koski asserts that he is entitled to summary judgment on all claims in Plaintiff's complaint on the baiss of res judicata and collateral estoppel. He also contends that summary judgment is proper based upon the applicable statute of limitations and because Plaintiff did not prevail in the action below. Plaintiff did not respond to the motion.

O.C.G.A. §9-12-40, the codification of Georgia's common law rule of res judicata, provides:

> A judgment of a court of competent jurisdiction shall be conclusive between the same parties and

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[1] For a more detailed description of the underlying facts, see the Court of Appeals opinion in *Rolleston v. Cherry*, 226 Ga. App. 750 (1997).

> their privies as to all matters put in issue . . . or might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.

Under this Code section, res judicata and collateral estoppel will bar a subsequent action or claim if there is an identity of parties and of issues, which were actually litigated or which could have been litigated. *Waggaman v. Franklin Life Ins. Co.*, 265 Ga. 565 (1995); *Lawson v. Watkins*, 261 Ga. 147, 148 (1991); *Blackwell v. Georgia Real Estate Comm'n*, 205 Ga. App. 233, 233-34 (1992); *Stiltjes v. Ridco Exterminating Co.*, 197 Ga. App. 852 (1990); *Firestone Tire & Rubber Co. v. Pinyan* 155 Ga. App. 343, 345 (19800. It is important to note that, while the causes of action are different, res judicata and collateral estoppel are concerned only with identity of subject matter. *Waggaman, supra; Caswell v. Caswell*, 162 Ga. App. 72 (1982). Under the general law regarding identity of cause of action, "[s]o long as a party pleads but one wrong in respect to the same transaction, the cause of action is the same, . . . and it makes no difference that the remedy sought to be applied under different procedures growing out of the same wrong may be different." *McCracken v. City of College Park*, 259 Ga. 490, 491 (1989).

According to the evidence in the record, Plaintiff filed a previous suit in Cobb County Superior Court (Civil Action File No. 981-10119-24) on December 18, 1998. In that complaint, Plaintiff claimed that the settlement agreement between the Cherry Estate and Defendants Coast House and Sandease was champerty and barratry. (Exhibit "A" to Defendant's Motion)[2].

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[2]Certified copies of the Cobb County pleadings were submitted by Koski in support of his motion.

Koski was joined as a defendant in that action based upon the fact that he prepared the settlement agreement as attorney for Coast House and Sandease. (*Id.* at ¶¶ 5, 9). The Cobb County action also claimed that the filing of a malpractice action in Fulton County, as required by the settlement agreement, was abusive litigation. (*Id.* at ¶¶3, 4, 13). After consideration of the case, the Cobb County trial judge awarded summary judgment to the defendants on all claims. (Exhibit "B" to Defendant's motion).

In this case, Plaintiff raises these identical claims. Currently, he asserts that Coast House, Sandease, its officers and directors, and its former attorney, Robert Koski, are liable for champerty, barratry and abusive litigation. Identical to the prior action, Koski was joined as a defendant based upon the fact that he prepared the settlement agreement. (Complaint, ¶¶3, 8). As in the prior case, Plaintiff again claims that the filing of a malpractice action in Fulton County, as required by the settlement agreement, was abusive litigation. (Complaint, ¶2, 4, 9, 11, 12, 3 [Count 2]).

Based upon the above evidence and the record in this case, it is apparent that all of the three criteria for res judicata are met. First, there is an undeniable identity of parties, as Koski was named as a defendant in both actions. Second, there is an identity of causes of action, as both complaints seek damages for champerty, barratry and abusive litigation.[3] The mere fact that Plaintiff relies on two different civil actions to support his claims

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[3]In fact, this Court notes that most of the factual allegations in the two complaints are either completely identical or substantially similar. *See, e.g.*, Cobb Complaint ¶¶2, 5, and 6-12, Fulton Complaint ¶¶2, 3, and 5-11. These examples are not intended to be a complete list, but are illustrative of the identity of claims in this action and the prior Cobb County action.

for abusive litigation does not defeat this finding, as the claim for abusive litigation *clearly* arises out of the same subject matter, i.e., the settlement agreement. Finally, there is a final judgment on the merits in the defendants' favor in the prior lawsuit, as evidenced by the award of summary judgment on Plaintiff's claims.[4]

For these reasons, the motion for summary judgment by Defendant Koski should be and hereby is **GRANTED**. There being no just reason for delay, final judgment is hereby entered against Plaintiff and in favor of Defendant Koski on all claims in the Complaint.

(2) Motion to Dismiss

The remaining Defendants filed a motion to dismiss. In their motion, these Defendants contend that Plaintiff's Complaint must be dismissed because the allegations of the Complaint, even if true, do not support any claim for champerty or barratry. First, they argue that they are not strangers to the malpractice litigation by the Estate, and therefore their agreement payment of any fees or costs incurred in that litigation is not champertous. Second, they argue that Plaintiff's claims for abusive litigation are barred by the applicable statute of limitations and must be dismissed. Finally, these Defendants assert that Plaintiff's claims for barratry must be

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[4]This Court also notes that the same rationale may apply to the other Defendants in this case, as well, since they are likely privies to the judgment in Cobb County. Under Georgia law, privies are "those who are in law so connected with a party to the judgment as to have such an identity of interest that the party to the judgment represented the same legal right. . ." *Waldroup v. Greene Cty Hospital Auth.*, 265 Ga. 864, 866 n.6 (1995). However, this issue was not raised by the co-Defendants, and it is not necessary for this Court to reach this question in light of the further holding below.

dismissed because this is a criminal statute, without a civil remedy, and because barratry concerns the filing of multiple actions, not a single complaint. Plaintiff did not respond to this motion.

Initially, this Court notes that Plaintiff has not stated any claims against Joseph A. McBride, Timothy B. McBride, and Frank McBride, Jr., the individual Defendants in this action. In fact, the only paragraph which specifically named these individual Defendants is ¶1 of the Complaint, which sets forth the parties addresses. None of the remaining paragraphs of the Complaint mention these individual Defendants. No relief is sought from them, and Plaintiff does not allege in any manner that they were individually involved in the actions at issue in this Complaint. In fact, it appears that the sole reason they are named is because they were officers or directors of Coast House or Sandease. Without any allegations as to personal liability, they cannot, as a matter of law, be held liable for any acts by Coast House or Sandease.

Since the Plaintiff has failed to state any claim against these Defendants, the motion to dismiss is **GRANTED** as to Defendants Joseph A. McBride, Timothy B. McBride, and Frank McBride, Jr. on all counts.[5]

Furthermore, after consideration of the Complaint and the relevant case law, this Court finds that the motion to dismiss is proper as to Coast House and Sandease, as well. First, this Court notes that Plaintiff has no standing to contest the validity or enforceability of the settlement

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[5]This Court further notes that Frank McBride, Jr., is deceased, and Plaintiff has not made any efforts to substitute the Estate as a named party. However, the same rationale would apply even if the Estate were substituted, and a dismissal against it would be proper, as well.

agreement at issue. Under O.C.G.A. §9-2-20, any action on a contract "shall be brought in the name of the party in whom the legal interest in the contract is vested . . ." It is undisputed that Plaintiff is not a party to the settlement agreement at issue. He has no legal rights or obligations under the settlement agreement and, in fact, is a complete stranger to the agreement. It has been specifically held by the Georgia Supreme Court that a stranger to a contract cannot sue to challenge the validity of that contract. *Morris v. Stillwell,* 257 Ga. 3 (1987).[6]

Even assuming, however, that Plaintiff had standing to contest the validity of the agreement, this Court finds that the settlement agreement is not champertous. In the settlement agreement, the Cherry Estate, Coast House and Sandease resolved all issues arising out of the failed sale of the property on St. Simons Island. Pursuant to the agreement, Coast House and Sandease obtained an interest in a number of properties held by the Estate. The Cherry Estate also agreed, among other things, to file an action for malpractice and/or contribution against Plaintiff. Specifically, the agreement provides:

> [The Estate] will hire the attorneys designated by [Coast House and Sandease] to pursue a claim for legal malpractice and/or contribution against Mr. Moreton Rolleston, Jr., on behalf of the Estate. [Coast House and Sandease] will agree to pay any and all necessary expenses involved in said litigation to be pursued on the basis of a contingent fee not to exceed thirty percent. The net recovery of

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[6] In *Morris,* the plaintiff sued for specific performance of a real estate contract between himself and the Stillwell Estate. Steven Weyl, who as a beneficiary of the Estate, intervened and argued that the contract was invalid and should be set aside. The Court determined that Weyl lacked any interest to challenge the contract.

> said claim will be payable upon receipt toward the note referred to in paragraph [6] above, with any remainder after full payment of the note to be paid to the Estate. This litigation is to be commenced as soon as practicable.

Plaintiff alleges that this agreement constitutes champerty and seeks actual damages in the amount of $10 million, plus punitive damages.[7]

Under O.C.G.A. §13-8-2, which prevents contracts which are against public policy, contracts of maintenance or champerty are unenforceable. O.C.G.A. §13-8-2(a)-(5). Champerty is defined as an agreement with a plaintiff or defendant to maintain an action at the party's expense in return for payment of the profits from the litigation. *Meeks v. Dewberry*, 57 Ga. 263 (1876); *Sapp v. Davids*, 176 Ga. 265 (1933); *Anderson v. Anderson*, 12 Ga. App. 706 (1913).[8] Under this definition, there must first be an undertaking by one party to defray the expenses of another's suit, and second, there must be a promise to divide the proceeds of the litigation. *Clark v. Harrison*, 182 Ga. 56 (1936); *Anderson, supra.*

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[7]It is interesting to note that Plaintiff apparently tried to raise champerty as a defense in the underlying malpractice action. However, the Court of Appeals specifically rejected this argument. *Rolleston v. Cherry*, 226 Ga. App. 750 (1997).

[8]Although there has not been much modern litigation concerning champerty in this state, a number of other jurisdictions have addressed this claim recently. For other opinions consistent with this Court's Order, *see, Osprey, Inc. v. Cabana Ltd. Partnership*, 532 S.E.2d 269 (S.C., 2000); *Schwartz v. Eliades*, 939 P.2d 1034 (Nev. 1997); *Kraft v. Mason*, 668 So.2d 679 (Fla. 4th DCA, 1996); *Reinhardt v. Kelly*, 917 P.2d 963 (N.M. App., 1996). For good general discussions of champerty, *see* 14 Am.Jur.2d 843 (1964); Ari Dobner, *Litigation for Sale*, 144 U. Pa. L. Rev. 1529 (1996).

Not all contracts which contain these elements are champertous, however. If the party paying the costs has "any interest" in the outcome of the litigation, or is related to either of the parties by blood or affinity, then the agreement will not be deemed to be champertous. *Johnson v. Hilton,* 96 Ga. 577 (1895); *Anderson, supra.* In effect, the particular interest in the outcome or the relationship of the parties makes the agreement not one between strangers and, thus, not champertous. *Anderson, supra.*

In the present case, it is alleged (and undisputed) that the expenses of litigation were being paid by Coast House and Sandease in return for a portion of the recovery. Even assuming this is true, as this Court must on a motion to dismiss, this agreement falls within the recognized exceptions to champertous contracts, because it is apparent from the face of the pleadings in this action that Coast House and Sandease had a particular interest in the outcome of the litigation between the Estate and Plaintiff. The malpractice action filed by the Estate arose out of the failed real estate transaction at which Coast House was the buyer. As a result of Plaintiff's malpractice, Coast House was required to sue the Estate to recover its monies. (Complaint, ¶ 4). However, the value of the Estate did not cover the amount of its judgment (Complaint, ¶ 6), and under the agreement, in order to fulfill the judgment, Coast House and Sandease would take a portion of the recovery in the malpractice action equal to the amount remaining on the judgment. (Exhibit "A," ¶ 7).

Based upon these facts of this case, it is clear that this case does not involve the classically champertous situation, i.e. one stranger financing another's litigation. Rather, Defendants Coast House and Sandease had a par-

ticular interest in the outcome of the litigation against Plaintiff which made them not strangers to the action.[9] For these reasons, this Court finds that the agreement is not champertous, and the motion to dismiss should be granted on this ground, as well.

Next, these Defendants contend that any claim for abusive litigation should be dismissed, as it is barred by the statute of limitations. Under O.C.G.A. §51-7-84(b), all claims for abusive litigation must be brought within one year of the final termination of the lawsuit at issue. In his Complaint, Plaintiff asserts that the filing of Fulton County Civil action No. D-97003, pursuant to the terms of the settlement agreement, was abusive litigation. (Complaint, ¶12). It is apparent from the face of the Complaint that a final judgment was entered in this case. (Complaint, ¶9). In fact, the Clerk's records demonstrate that a final judgment was entered in Case No. D-97003 on April 7, 1995. As this action was filed well beyond the one year statute of limitations for abusive litigation claims, this Court finds that the Defendants' motion to dismiss this claim should be granted, as well.

Finally, this Court finds that, as a matter of law, there is no civil cause of action for barratry. Under O.C.G.A. §16-10-95, barratry is a criminal offense which is punish-

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[9]This finding comports with more modern law on assignability of judgments and actions. *See*, O.C.G.A. §9-12-21 (all judgments are freely assignable). Historically, actions or judgments were not assignable; hence, champerty was a favored defense to any attempted assignment. However, in modern legal history, actions and judgments are freely assignable, making champerty an unfavored cause of action. In fact, as early as 1890, the Georgia Supreme Court recognized that the ability to assign actions and judgments vitiated the need for champerty. *Reed v. James*, 84 Ga. 380 (1890).

able by a fine of not more than $5,000 or by imprisonment from one to five years. The law is well settled that violation of a criminal statute does not always give rise to civil liability. In order to authorize private litigation on criminal statutes, the legislature must have indicated a strong public policy for imposing both civil and criminal penalties. *Connor v. Tate,* 130 F.Supp.2d 1370 (N.D. Ga. 2001); *Key v. Grant,* 238 Ga. App. 818 (1999); *Doyle Dickerson Co. v. Durden,* 218 Ga. App. 426 (1995); *Rolleston v. Huie,* 198 Ga. App. 49 (1990) (same plaintiff). As there is absolutely no indication that the legislature intended to provide any civil liability for a violation of this statute, Plaintiff cannot state a claim under this Code section.[10] For these reasons, the Defendants' motion to dismiss this Count should be granted.

For the above reasons, the Defendants' motion to dismiss should be and hereby is **GRANTED.** All claims against Defendants Joseph A. McBride, Timothy B. McBride, Frank McBride, Jr., Coast House, Ltd. and Sandease, Ltd. are hereby **DISMISSED** in their entirety.

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[10]Moreover, even if this statute provided civil liability, Plaintiff's claim would still fail, since barratry requires at least three instances of champerty. *Churchwell v. State,* 195 Ga. 22 (1942). In this case, Plaintiff only alleged one suit, which would not constitute barrtry as a matter of law.

SO ORDERED, this 3rd day of May, 2001.

/s/ Stephanie Manis
Judge Stephanie B. Manis
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:
Moreton Rolleston, J., pro se
Robert C. Koski, Esq.
Woodrow W. Vaughan, Jr., Esq.

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